CONSTITUTIONAL LIMITATIONS UPON THE SERVICE OF FOREIGN CORPORATIONS.—The service of foreign corporations, in actions *in personam,* presents two distinct constitutional questions: *first,* is the corporation within the jurisdiction so as to be subject to process; *second,* does the service of process constitute due notice to the corporation of the pendency of the action?[1]

In order that a court may render a personal judgment it must secure jurisdiction of the person of the defendant.[2] In the case of natural persons the problem is comparatively simple. The general rule may be stated as follows: where the defendant is a resident of the state in which suit is brought, actual or constructive service may confer jurisdiction on the court regardless of whether the defendant is within or without the state; where he is a non-resident, he must be served personally within the state.[3] Furthermore, service on the agent of a non-resident principal is not considered service on the principal.[4]

When, however, a corporation is defendant, difficulties arise, for a corporation cannot enter a state other than that in which it is incorporated, and it must, moreover, always act through agents.[5] It is generally held that the mere presence of agents in a foreign state does not bring the corporation within the jurisdiction.[6] It must appear that the corporation is "doing business" within the state.[7] The adoption of this test constitutes nothing more than a just and logical application to corporations of the general rule that physical presence is the basis of jurisdiction in personal actions against non-residents.[8]

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[1]See St. Clair *v.* Cox (1882) 106 U. S. 350, 1 Sup. Ct. 354; St. Louis, S. W. Ry. *v.* Alexander (1913) 227 U. S. 218, 33 Sup. Ct. 245.

[2]See Buchanan *v.* Rucker (1808) 9 East 192; Picquet *v.* Swann (C. C. 1828) 19 Fed. Cas., No. 11,134; Pennoyer *v.* Neff (1877) 95 U. S. 714.

[3]See Pennoyer *v.* Neff, *supra*; 17 Columbia Law Rev. 441.

[4]Moredock *v.* Kirby (C. C. 1902) 118 Fed. 180; Cabanne *v.* Graf (1902) 87 Minn. 510, 92 N. W. 461; *cf.,* D'Arcy *v.* Ketchum (1850) 52 U. S. 165.

[5]See *Ex parte* Schollenberger (1877) 96 U. S. 369.

[6]St. Clair *v.* Cox, *supra*; St. Louis Wire-Mill Co. *v.* Consolidated Barb-Wire Co. (C. C. 1887) 32 Fed. 802; Clews *v.* Woodstock Iron Co. (C. C. 1890) 44 Fed. 31; Smithson *v.* Roneo (D. C. 1916) 231 Fed. 349; Newell *v.* Great Western Ry. (1869) 19 Mich. 336; Crook *v.* Girard Iron Co. (1898) 87 Md. 138, 39 Atl. 94; *contra,* Pope *v.* Terre Haute Car Mfg. Co. (1881) 87 N. Y. 137; Sadler *v.* Boston & Bolivia Rubber Co. (1910) 140 App. Div. 367, 125 N. Y. Supp. 405; see Jester *v.* Steam Packet Co. (1902) 131 N. C. 54, 42 S. E. 447.

[7]Riverside Mills *v.* Menefee (1915) 237 U. S. 189, 35 Sup. Ct. 579, and cases in footnote 6, *supra.*

[8]As was said by the court in Good Hope Co. *v.* Railway Barb Wire Co. (C. C. 1884) 22 Fed. 635, at p. 636:

> "When a corporation has so far identified itself with a locality beyond the state of its creation and domicile as to be found there for practical business purposes, it is reasonable to treat it as there also to respond to its obligations when called upon to do so in the courts of that locality."

The earlier cases in this country attempted to justify the adoption of the "doing business" test on the theory that, since the state could exclude the corporation, it could make consent to service upon the corporate agents a prerequisite to admission. See St. Clair *v.* Cox, *supra.* But as a matter of fact service on the corporate agents is upheld where the state cannot exclude the corporation and where consequently the theory of consent as a prerequisite to admission has no application. International Harvester *v.* Kentucky (1914) 234 U. S. 579, 34 Sup. Ct. 944.

No very exact definition can be given as to just what will constitute "doing business",[9] and each case must stand on its own facts.[10] The courts seem, sometimes, to have drawn a distinction between ordinary agents and general officers such as the president. They say that when an ordinary agent is served the business must be a systematic and regular series of transactions,[11] whereas when a general officer is served, the mere presence of such an official on a single business transaction is sufficient to constitute "doing business".[12] This distinction, however, has not been unanimously adopted, for in some jurisdictions the test applied to general officers is the same as that applied to ordinary agents.[13] The dual standard may, perhaps, be justified on the ground that, since the whole doctrine of the presence of a corporation in a foreign state rests upon a fictitious basis, the final test should in each case or class of cases be based on practical considerations of policy and not on the strict application of theoretical principles. Certainly, on theory, the dual test would seem inconsistent; for it renders jurisdiction in the one case dependent on the nature of acts constituting "doing business", in the other, on the authority of the person conducting the transaction. Moreover, to adopt the latter test is to confuse the problem of what constitutes presence within the state with the problem of what constitutes due notice; and, as was stated above, these problems are distinct.

Assuming that the corporation is "doing business" within the state, any person may be served, notice to whom would reasonably constitute notice to the corporation.[14] Thus service on a general officer would constitute such notice, regardless of the question whether or not such officer was personally engaged in the business of the corporation.[15] If the person on whom service of process is made is not an officer, service upon him will be valid provided his position is such that, in the usual course of business, he is under a duty to call such notice to the attention of the corporation.[16] So, where an agent is transacting business of

[9]It is to be noted in this connection that the term "doing business" has acquired different meanings under other laws (*e. g.*, licensing laws). See International Text Book Co. *v.* Tone (1917) 220 N. Y. 313, 115 N. E. 914.

[10]See St. Louis, S. W. Ry. *v.* Alexander, *supra,* at p. 227; *cf.,* La Bourgogne [1899] P. 1.

[11]See St. Louis, S. W. Ry. *v.* Alexander, *supra*; International Harvester *v.* Kentucky, *supra*; Pomeroy *v.* Hocking Valley Ry. (1916) 218 N. Y. 530, 113 N. E. 504. The mere solicitation of patronage has not been considered "doing business". Green *v.* Chicago, *etc.* Ry. (1907) 205 U. S. 530, 27 Sup. Ct. 595; Goepfert *v.* Compagnie Generale Transatlantique (C. C. 1907) 156 Fed. 196.

[12]Houston *v.* Filer & Stowell Co. (C. C. 1898) 85 Fed. 757; New Haven, *etc.* Co. *v.* Downingtown Mfg. Co. (C. C. 1904) 130 Fed. 605; Premo Specialty Mfg. Co. *v.* Jersey-Creme Co. (C. C. A. 1912) 200 Fed. 352.

[13]Clews *v.* Woodstock Iron Co., *supra*; Noel Construction Co. *v.* G. W. Smith & Co. (C. C. 1911) 193 Fed. 492; see Hoyt *v.* Ogden Portland Cement Co. (C. C. 1911) 185 Fed. 889, 898 *et seq.*

[14]Lumbermen's Ins. Co. *v.* Meyer (1905) 197 U. S. 407, 25 Sup. Ct. 483.

[15]Lumbermen's Ins. Co. *v.* Meyer, *supra.* The fact that service on a general officer within the state is void if the corporation is not "doing business" within the state is not because of any lack of notice but simply because of lack of jurisdiction. Riverside Mills *v.* Menefee, *supra*; see cases in footnote 11, *supra.*

[16]Carroll *v.* New York, *etc.* R. R. (1900) 65 N. J. L. 124, 46 Atl. 708; Conn. Mut. Life Ins. Co. *v.* Spratley (1899) 172 U. S. 602, 19 Sup. Ct. 308; see St. Clair *v.* Cox, *supra.*

such a nature that the corporation may be said to be doing business through him, that is, where he is a representative of the corporation rather than a mere employee, process may be served on him.[17]

Where a state statute requires that a corporation "doing business" within the state designate an agent upon whom service may be made, and further provides who may be served in default of such appointment, an agent thus designated may be served regardless of whether the cause of action arose within or without the local forum.[18] Where, however, no person has been actually designated, a different rule prevails. Even though the state has no power to hold service on a person not a true agent to be notice to the corporation,[19] yet, if the action has arisen out of a transaction within the state, the corporation will be estopped to deny the validity of the service, since it has done business in defiance of the state laws.[20] But where the cause of action arises without the state, there is no basis for such an estoppel, for the corporation was not, as to the particular transaction, acting in defiance of the laws of the state; and, therefore, in this class of cases, service upon the persons provided for in default of appointment by the statute is invalid.[21]

The case of *Tauza* v. *Susquehanna Coal Co.* (1917) 220 N. Y. 259, 115 N. E. 915, involved the application of these principles to §§ 432, 1780 of the New York Code of Civil Procedure. The plaintiff, a resident of New York, brought suit against the defendant, a Pennsylvania corporation maintaining in New York a sales office in charge of a resident sales agent who had under his supervision eight salesmen and a considerable clerical force. From this office, orders were solicited in the state, subject to confirmation by the main office in Philadelphia.

[17]Norton *v.* Berlin Iron Bridge Co. (1889) 51 N. J. L. 442, 17 Atl. 1079; Riverside Mills *v.* Menefee, *supra*. A "managing agent" under § 432, subd. 3 of the New York Code of Civil Procedure would seem to be such a representative. Barrett *v.* American Tel. & Tel. Co. (1893) 138 N. Y. 491, 34 N. E. 289.

[18]Penna. Fire Ins. Co. *v.* Gold Issue Mining Co. (1917) 243 U. S. 93, 37 Sup. Ct. 344; Johnston *v.* Trade Ins. Co. (1882) 132 Mass. 432; Smolik *v.* Philadelphia, *etc.* Co. (D. C. 1915) 222 Fed. 148; Bagdon *v.* Philadelphia, *etc.* Co. (1916) 217 N. Y. 432, 111 N. E. 1075; *cf.*, Logan *v.* Bank of Scotland [1904] 2 K. B. 495.

[19]Carroll *v.* New York, *etc.* R. R., *supra*; see Cella Commission Co. *v.* Bohlinger (C. C. A. 1906) 147 Fed. 419.

[20]Ehrman *v.* Teutonia Ins. Co. (D. C. 1880) 1 Fed. 471; Diamond Plate Glass Co. *v.* Minneapolis Mut. Fire Ins. Co. (C. C. 1892) 55 Fed. 27; Sparks *v.* National Masonic Acc. Ass'n. (C. C. 1896) 73 Fed. 277; *cf.*, Bankers' Surety Co. *v.* Town of Holly (C. C. A. 1915) 219 Fed. 96.

[21]Old Wayne Life Ass'n *v.* McDonough, *supra*; Simon *v.* Southern Ry., *supra*. The doctrine of these cases would not seem applicable to cases where true agents were served, since, if the corporation is doing business in the state rightfully or wrongfully, its agents and general officers in fact represent it. See Rishmiller *v.* Denver, *etc.* R. R. (1916) 134 Minn. 261, 159 N W. 272; but *cf.*, Takacs *v.* Philadelphia, *etc.* Ry. (D. C. 1915) 228 Fed. 728, where, although the person served in default of appointment by the corporation was a director, the court vacated the service because the cause of action arose outside of the state. The question is thus raised whether under the New York Code of Civil Procedure § 432 (3) it is essential in actions *in personam* that the cause of action arise within the state. It is submitted that, all the persons there mentioned being true agents, there is no such constitutional requirement. See 17 Columbia Law Rev. 65.

In response to these orders goods were shipped from Pennsylvania to various points in New York. The court held, (1) that the defendant was "doing business" within the state so as to be amenable to its jurisdiction, (2) that the sales agent was a person on whom service could properly be made. The case in effect overruled a number of earlier erroneous decisions,[22] and laid down a rule in harmony with the decisions of the federal courts:—if the plaintiff is given the right to sue under § 1780, he must, in all cases, establish that the foreign corporation is "doing business" within the state;[23] and, subject to the limitations contained in § 432, he may serve the person conducting such business.[24]

FUGITIVES FROM JUSTICE UNDER THE FEDERAL RENDITION CLAUSE.—The Constitution provides for the rendition of fugitives,[1] and congressional legislation enacted to aid in the carrying out of this provision requires that, in a proper case, fugitives be given up on demand made upon the governor of the asylum state.[2] In order to make out a proper case for extradition, it is essential that it be shown, *first,* that the person whose extradition is sought is substantially charged with a crime,[3] and, *second,* that he is a fugitive from justice.[4]

Just what will constitute a person a fugitive from justice is a question which has been repeatedly before both the federal and state courts. In order not to impair the efficacy of the constitutional provision, the phrase "person who shall flee from justice" has, in almost all cases, received an extremely liberal interpretation.[5] Thus, in order for a person to become a fugitive from justice, it is not necessary that his

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[22]*Inter alia,* Pope *v.* Terre Haute Car Mfg. Co., *supra*; Sadler *v.* Boston & Bolivia Rubber Co., *supra*; *dicta* in Grant *v.* Cananea Con. Copper Co. (1907) 189 N. Y. 241, 82 N. E. 191.

[23]The decision has the effect of abolishing any distinction between the respective rights of residents and non-residents to sue a foreign corporation; for, despite the provisions of § 1780, a resident plaintiff must show that the corporation is "doing business" in the state, while under § 1780 (4) this fact is a ground for suit by non-residents in the New York courts.

[24]Since all the persons mentioned in § 432 as persons who may be served are true agents, the section presents no constitutional difficulties except those suggested in footnote 21, *supra.* Section 432 is purely procedural; the jurisdiction of the court must be drawn from other sections of the code. See Dollar Co. *v.* Canadian C. & F. Co. (1916) 220 N. Y. 270, 115 N. E. 711.

[1]Art. IV, § 2. For the rendition of fugitives prior to the adoption of the Constitution, see 2 Moore, Extradition, §§ 517-519.

[2]U. S. Rev. Stat. §§ 5278, 5279. It is to be noted that, if the governor refuses to surrender the fugitive, *mandamus* will not lie to compel him to do so. Commonwealth *v.* Dennison (1861) 65 U. S. 66.

[3]*Ex parte* Reggel (1885) 114 U. S. 642, 5 Sup. Ct. 1148; see 14 Columbia Law Rev. 665. The crime must be charged by indictment or affidavit. U. S. Rev. Stat. § 5278. As to the value of an information, see 17 Columbia Law Rev. 248.

[4]Roberts *v.* Reilly (1885) 116 U. S. 80, 6 Sup. Ct. 291. The findings of the governor of the asylum state may be reviewed on *habeas corpus, Ex parte* Reggel, *supra*; see 14 Columbia Law Rev. 665, by both the state and federal courts. Robb *v.* Connolly (1884) 111 U. S. 624, 4 Sup. Ct. 544.

[5]Appleyard *v.* Massachusetts (1906) 203 U. S. 222, 27 Sup. Ct. 122.